

SUBCOMMITTEE NO. 2

Agenda

Byron Sher, Chair
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PART 1

**Thursday, May 1, 2003
Upon Adjournment of Session
Room 112**

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Resources--Environmental Protection—Public Safety—Energy

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0820 Department of Justice

It is the responsibility of the Attorney General to uniformly and adequately enforce the laws of the State of California. The Attorney General fulfills this mandate through the programs under his control at the Department of Justice (DOJ). There are five primary divisions within the department, including (1) Civil Law, (2) Criminal Law, (3) Public Rights, (4) Law Enforcement, and (5) Criminal Justice Information Services. In addition, there are the Directorate and Administration Divisions, Executive Programs, the Division of Gambling Control, and, as of January 1, 2000, the Firearms Division.

Budget Overview. The budget proposes \$606.7 million for the Department of Justice, which is a decrease of \$31.1 million, or 4.9 percent below current year expenditures. General Fund support would decrease by \$14.4 million from the revised current year budget to \$302 million.

DOJ Program Requirements					
Program	<i>(dollars in thousands)</i>			Change	Percent Change
	2001-02	2002-03	2003-04		
Directorate and Administration	\$23,565	\$25,527	\$23,935	-\$1,592	-6.2%
Distributed Directorate and Administration	-23,565	-24,445	-23,935	-510	-2.1%
Legal Support and Technology	43,030	42,140	41,837	-303	-0.7%
Distributed Legal Support and Technology	-43,030	-42,140	-41,837	-303	-0.7%
Executive Programs	15,470	17,222	15,000	-2,222	-12.9%
Civil Law	99,588	107,174	105,357	-1,817	-1.7%
Criminal Law	99,691	107,879	96,632	-11,247	-10.4%
Public Rights	56,144	56,417	53,592	-2,825	-5.0%
Law Enforcement	156,344	164,895	151,959	-12,936	-7.8%
California Justice Information Services	155,134	157,040	152,546	2,602	137.8%
Gambling	11,555	14,745	14,140	-605	-4.1%
Firearms	7,447	11,356	14,465	3,109	27.4%
State-Mandated Local Programs	14,877	3	3	0	n/a
Less amount funded in the Political Reform Act	(216)	(216)			n/a
Total	\$616,250	\$637,813	\$606,694	-\$31,119	-4.9%

Executive and Directorate Programs. The Directorate Program consists of the Attorney General's Executive Office, the Equal Opportunity Employment Office, and the Opinion Unit. The Division of Executive Programs maintains internal and external department communications. It consists of the Office of Legislative Affairs, the Crime Violence Prevention Center, special programs, and various communication offices.

Civil Law, Criminal Law, and Public Rights Divisions. The Civil Law Division provides legal services to state agencies and Constitutional Officers in the areas of licensing, government law, health, education, welfare, regulation, and taxation. The Criminal Law Division represents the state in all criminal matters before the appellate and supreme courts and defends the state in actions filed by state inmates under the Federal Civil Rights Act. The Public Rights Division provides legal services to state agencies and Constitutional Officers in the areas of civil rights, natural resources, land law, consumer law, and child support enforcement.

Divisions of Law Enforcement and Gambling Control. The Division of Law Enforcement is organized into three bureaus, including Investigation, Narcotic Enforcement, and Forensic Services. The Division of Gambling Control will be developing regulations that will govern gaming establishments. Pursuant to

the provisions of Chapter 867, Statutes of 1997, the Board of Gambling Control was abolished on January 1, 1999 and replaced by the California Gambling Control Commission.

Criminal Justice Information Services Division. The Criminal Information Services Division was created in the current year to include three former Division of Law Enforcement bureaus (Bureau of Criminal Information and Analysis, Bureau of Information and Identification, and the Western States Information Network) with the Hawkins Data Center and establishing the Criminal Justice Information Services Division.

Budget Issues

CYA Class Action Lawsuit.

Background. In January 2002, a class action lawsuit—*Stevens v. Harper*—was filed in federal court against the Youth Authority challenging the department's policies and procedures and virtually every condition of a ward's confinement in Youth Authority facilities. In September, the federal district court issued orders dismissing some claims and limiting the plaintiff classes.

The federal case is limited to the following claims: (1) a claim of violations of the Americans with Disabilities Act, (2) a claim that CYA officials improperly interfered with attorney-client communications, (3) a claim about the unconstitutionality of mental health treatment, (4) a claim the CYA officials have not adequately protected wards' physical safety, (5) a claim of inadequate access to religious services, (6) a claim that CYA is not adequately providing education.

Budget Request. The budget requests \$4.3 million for DOJ to defend the Youth Authority in this lawsuit. The funding request is for DOJ's projected costs of the case leading up to a possible trial. These costs include expenses related to the discovery process and contracting with subject area experts for defense testimony. In addition, the plaintiffs have filed a state lawsuit because the court significantly narrowed the scope of the federal suit.

Section Letter Denied. A similar request in a section letter for current year costs of \$10.7 million was previously denied by the Legislature.

Analyst's Recommendation. The LAO recommends deletion of the request because the parties will probably reach settlement. The LAO further recommends adoption of the following budget bill language to allow DOJ to submit a funding request in the event that settlement is not reached.

0820-001-0001 Provision X. Notwithstanding section 27.00 of the 2003-04 Budget Act, the Department of Finance may submit a deficiency request if *Stevens v. Harper* proceeds to trial in federal or state court, or if expert consultant costs are incurred from settlement negotiations in this case.

Finance Letter Request. In a Finance Letter request, the Administration is proposing the following budget bill language due to the uncertainty of costs in the budget year. The Finance Letter indicates that the administration will not know until at least May or June of 2003 whether the case will be settled, or, if it will go to trial.

0820-001-0001 Provision X. Of the amount included in Schedule (7) of this item, \$4,263,000 is available for costs related to litigation in the matter of *Stevens v. Harper*. These funds are to be made available subject to the Department of Justice providing a detailed cost justification for expenditures related to this litigation and upon receiving approval from the Department of Finance.

Staff Recommendation. Staff recommends adopting the LAO recommendation. The LAO language allows, for additional oversight by the Legislature through the regular section letter process.

Action

Crime Lab Fees

Background. The Division of Law Enforcement operates 10 regional crime laboratories and 2 special DNA laboratories. The regional labs provide analysis of various types of physical evidence and controlled substances, as well as analysis of materials found at crime scenes. While DOJ labs provide services to state agencies, they primarily serve local law enforcement agencies in jurisdictions without their own crime labs. These local agencies are found in 43 counties representing 25 percent of the state's population. The remaining jurisdictions maintain their own forensic labs at their own expense. Since 1977, DOJ labs have been reimbursed by local law enforcement agencies for blood alcohol testing from fees paid from penalties collected for driving under the influence convictions. However, for the analysis of crime evidence, state labs receive no reimbursements from local agencies that use their services.

Budget Request. The budget proposes to charge local law enforcement agencies for forensic services provided by DOJ crime labs effective January 1, 2004. The proposal is estimated to generate \$3.5 million in reimbursements from local law enforcement agencies and reduce General Fund spending by the same amount.

Analyst's Recommendation. The LAO notes that the proposal to charge local law enforcement agencies for forensic services provided by DOJ has merit. However, the LAO has identified a number of implementation issues which need to be addressed before the proposal is adopted. Therefore, the LAO recommends that DOJ and the Department of Finance provide the Legislature, prior to budget hearings, with the details of the proposal, including its plan to resolve the following issues.

Mitigating Unusually High Costs for Complex Investigations. Some cases processed by the labs involve significant amounts of physical evidence that require weeks of analysis and testing. This is particularly true of investigations involving firearms, blood, semen, hairs, fibers, and other trace evidence. If local agencies were to be billed for the costs associated with each case, the investigation of some serious crimes could create a fiscal hardship for smaller agencies to support. In order to ensure that such crimes continue to be investigated, some mechanism should be provided to mitigate these costs for smaller agencies.

Ensuring That the Labs Are Financially Protected From Lags in Payment or Nonpayment of Fees. If the labs are to be funded by reimbursements, they must have a mechanism to ensure full and timely payment of these fees. As fee requirements are expanded, DOJ must either have the authority to refuse services to agencies that do not pay their fees, or to receive payment out of some other state allocation of funds to the local jurisdiction.

Establishing an Appropriate Fee Schedule for Charging Local Agencies. Determining the appropriate basis for allocating the costs of lab services can be challenging for some forensic services. For example, the costs of criminalistics analysis can vary widely depending on the case, such that a flat-fee schedule would probably be inappropriate. As a result, it will be necessary to undertake a review of the services provided by the labs and the costs associated with them in order to determine the appropriate fees.

Staff Recommendation. Staff recommends holding this open at this time.

Action

Forensic Lab Positions

Budget Request.. The budget proposes \$1.5 million and 13 permanent criminalist positions to reduce a backlog of cases awaiting forensic analysis in state Department of Justice (DOJ) forensics labs. DOJ's Bureau of Forensic Services has 10 regional labs that provide forensic crime evidence analysis primarily to local law enforcement agencies, as well as to state and federal agencies, located throughout the state that do not have their own labs. Criminalists analyze physical evidence of criminal events and interpret their findings in courts of law.

Analyst's Recommendation. The LAO recommends deletion of the \$1.5 million requested for 13 permanent criminalist positions. The LAO believes that vacancies in these positions have contributed to the backlog of cases and that filling current vacancies could help reduce the backlog. In addition, the Governor's proposal to charge local law enforcement agencies fees for forensic services provided by the labs will likely reduce demand for these services, which would also help reduce the backlog.

Action.

License Approval Process

Background. The Gambling Control Act makes the Gambling Control Commission (GCC) responsible for licensing and imposing fines on persons involved in controlled gambling activities, such as card rooms. With respect to Indian gaming, the GCC is charged with reviewing licenses and permits to make findings of suitability to tribal gaming authorities to help assure that no unqualified or disqualified person is issued or allowed to hold a license. Individuals who must apply for gambling licenses include: (1) those who have a financial interest in the gambling establishment; (2) key employees of the gambling establishment, primarily management and those who handle money; (3) other employees of the gambling establishment; and (4) suppliers of gambling equipment and resources. The Division of Gambling within the Department of Justice (DOJ) is responsible for performing the background check on individuals.

Issue. Last year, the LAO raised an issue with respect to the DOJ's Division of Gambling and the license approval process. According to estimates at that time from the DOJ, there may be as many as 12,000 to 15,000 individuals designated as "key" employees from tribal gaming establishments who would have gambling licenses for review by the GCC for findings of suitability. In addition to this number, there is an unknown number of those with a financial interest and certain suppliers of gaming equipment whose licenses are also to be reviewed by the GCC in order to make findings of suitability.

At the Subcommittee hearing on March 6, the GCC reported that the Division of Gaming at the DOJ was currently processing about 1,200 applications and had forwarded a total of approximately 300 to the

GCC. The GCC has reviewed and forwarded approximately 300 findings of suitability to tribal gaming authorities.

Budget Request. Regarding suppliers of gaming equipment, individuals and entities that supply tribal gaming establishments with goods and services are required to pay a deposit in advance for the background investigation. The DOJ indicates that some of these investigations are estimated to be in the hundreds of thousands of dollars. The Administration has proposed budget bill language to increase the reimbursement authority to expend the funds deposited. The current reimbursement authority is \$872,000. The following proposed language would increase the authority by \$2.5 million.

Notwithstanding Section 28.5 of this act, the Department of Finance may augment the reimbursement expenditure authority provided in this item by an aggregate of \$2.5 million above the amount approved in this act for the Division of Gambling Control to cover the cost of background investigations where the individual or entity being investigated has deposited the costs of the investigation in advance and the corresponding expenditure has not been provided in this item. The Department of Finance shall notify the chairpersons of the budget committees, the Joint Legislative Budget Committee, and the Department of Justice within 15 days after the augmentation is made as to the amount and justification of the augmentation and the program that has been augmented.

Staff Comments. The Subcommittee may wish to ask the DOJ the status of performing background checks on “key” employees, and if there is a timeline for processing the outstanding applications. The Subcommittee also may wish to ask whether the proposed budget bill language is necessary given the ability to augment this item through the section letter process.

Staff Recommendation. Staff recommends deleting the proposed budget bill language.

Action.

Spousal Abusers’ Prosecution Program

Background. The Spousal Abuser Prosecution Program was established in 1994 as part of the Battered Women’s Protection Act. The program provides grant support to district attorney offices and victims support groups throughout the state for vertical prosecution of spousal abuse cases.

Budget Request. The budget proposes a reduction of \$3.2 million in the DOJ budget through elimination of this program.

Staff Comments. The Subcommittee has received letters of support for restoring funding for this program from district attorneys and victims groups.

Action

Plata v. Davis

Budget Request. Last year, the Department of Corrections agreed to a settlement in the Plata v. Davis class action lawsuit regarding prison inmate medical care. The budget proposes a reduction of \$1.6 million for external consultant funding related to the case.

Staff Comments. The Subcommittee may wish to ask DOJ how many positions and funding remains in the budget for DOJ related to this case, and what functions are continuing to be performed.

Action.

Public Rights Law Enforcement Special Fund

Budget Request. The budget proposes a reduction of \$500,000 for the Public Rights Division from the General Fund and would appropriate \$500,000 from the proposed Public Rights Law Enforcement Fund.

Trailer Bill Language. Existing law entitles the DOJ to recover from defendants named in a charitable trust enforcement action all actual costs incurred in conducting action, as specified. The Administration has proposed trailer bill language that would entitle the DOJ to recover all reasonable attorneys fees and costs, and that whenever the DOJ prevails in a civil action to enforce specified public rights, the court shall award to the DOJ all costs of investigating and prosecuting the action, including expert fees, reasonable attorney fees and costs. The bill establishes the Public Rights Law Enforcement Special Fund. These funds collected pursuant to the bill would be deposited into the special fund, to be administered by the DOJ to support the investigation and prosecution of any matter within the authority of the Public Rights Division.

Action.

Other Requests.

The following list summarizes additional Budget Change Proposals submitted by the DOJ.

Issue Title	Positions	Dollars (in thousands)
Bureau of Medi-Cal Fraud and Elder Abuse Increase. Funding will make permanent 20 two-year limited term positions to investigate and prosecute elder abuse and neglect in Medi-Cal funded facilities. (General Fund and Federal Funds).	20	2,179
Dangerous Weapon Facility/Vehicle Inspections. Funding to meet the objectives of Chapter 910, Statutes of 2002 (AB 2580). (Special Funds).	1	165
Drug Pricing Litigation. Funding to enable the Bureau of Medi-Cal Fraud and Elder Abuse to prosecute national pharmaceutical manufacturers who have engaged in illegal drug pricing manipulation. (Special Fund and Federal Funds).	8	993

Williams vs. State of California. Funding to continue the defense in this case which challenges the K-12 educational system. (General Fund).	6	1,254
Automated Child Abuse System. Funding and positions to process on-going workload associated with the Child Protection Program. (General Fund).	5	282
Handgun Testing. Funding to met the objectives of Chapter 912, Statutes of 2002 (AB 2902). (Special Fund).	0	180
Lloyds of London Litigation. One year funding authority to continue defense of the case. (General Fund).	0	5,724
Capitol Crash Litigation. One-year funding authority to continue this case. (General Fund).	0	766
Hyatt vs. Franchise Tax Board. Funding and positions to continue pursuing this case. (General Fund).	3	2,523
CALFED Bay-Delta Program Representation. Reimbursement authority and 3 positions to provide continuing legal representation for the CALFED program.	3	315
Criminal Intelligence Bureau. Creation of a new bureau within the Division of Law Enforcement, by redirecting existing units, employees, and funding.	0	0
National Criminal History Improvement Program (NCHIP) – Funding for Year 8. (Federal Funds)	1	2,200
Western States Information Network (WSIN). Federal Grant Augmentation.	0	842
High Intensity Drug Trafficking Area (HIDTA). Permanent reimbursement authority for continued participation in the HIDTA program.	1	992
Juvenile Accountability Incentive Block Grant (JAIBAG). One-time reimbursement authority to purchase palm print hardware, software, and programming.	0	2,497
Department of Conservation – Recycling Fraud. Additional permanent reimbursement authority to supplement the existing investigative team with one additional investigative team using existing vacant positions.	0	974
Investigative Services Unit. Centralize the legal division's investigative resources in the Division of Law Enforcement. No new funding or staff.	0	0
Transfer of Child Support Program to the Department of Child Support Services. (General Fund and Reimbursement Authority).	-53	-3,480
Federal Criminal Offender Record Information (CORI) Checks. Funding to implement Chapter 918, Statutes of 2002 (AB 1694). (Special Fund).	0	1,455
Various Reductions. Reductions to the Justice Information Services Division (\$1.95 million), Division of Law Enforcement (\$8.8 million), Firearms Division (\$114,000), Civil Law Programs (\$1.8 million), Criminal Law (\$4.8 million), Public Rights Division (\$2.9 million), Executive Programs (\$1.8 million), Administrative Services (\$600,000), and the Division of Legal Support and Technology (\$270,000). The reductions to the Division of Criminal Law and Executive Programs are discussed above. In addition to the General	-43	-18,493

Fund reduction, from these proposals, reimbursement authority is increased \$3.5 million and special fund appropriations are increased by \$901,000.		
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Finance Letters

California Witness Protection Program.

Finance Letter Request. This Finance Letter requests an increased of \$3 million for the California Witness Protection Program. This program offers protection to crime witnesses from retaliation, threats, and other intimidation. This program was funded in prior years by the Restitution Fund. Due to the fund reserve in the Restitution Fund, the budget did not propose to continue funding for the program. This request would restore full funding for the program.

Staff Recommendation. Staff recommends approval of the Finance Letter request.

Action

DNA Testing Fund Spending Authority.

Finance Letter Request. This Finance Letter requests an increase of \$315,000 to reimburse local agencies for the costs of collecting databank blood specimens, saliva samples, and print impressions incurred pursuant to Penal Code Section 295(f)(3) requirements.

Staff Recommendation. Staff recommends approval of the Finance Letter request.

Action

Energy Litigation

Budget Request. The budget proposes \$9.5 million and 36 positions for the Department of Justice (DOJ) to litigate energy cases as a result of California's energy crisis. The request is for two-year funding that would reauthorize 23 existing limited term positions, authorize 13 additional positions, and provide support for external consultant expenses. The main purpose of the request is to investigate and litigate actions that may have led to the manipulation of the electricity and natural gas markets in California.

Analyst's Recommendation. The LAO recommends deletion of the \$9.5 million requested for DOJ to litigate cases related to the energy crisis because the request has not been adequately justified. The LAO further recommends that if DOJ submits a new funding request for this purpose that the Legislature require the department to submit the following information: (1) a reconciliation of recovered litigation costs and how they replace DOJ expenses related to energy litigation; (2) the number of cases that DOJ intends to litigate with the new funding request and the estimated workload from each of those cases; and (3) what portion of the workload from energy litigation will be provided by other state agencies.

Analyst Concerns. First, the LAO notes that the request indicates that DOJ will be litigating over 100 cases in state and federal courts. However, more recent information provided by the department indicates that several of these cases have been settled or dropped. Since there will be little or no workload

associated with these cases, the LAO believes that the funding request at the current level is no longer justified.

Second, the LAO has concerns about duplication and ill-coordinated efforts. DOJ, along with several other state agencies including the California Energy Commission, the Electricity Oversight Board, the Public Utilities Commission (PUC) and the Department of Water Resources have been involved in efforts to recover costs from utility companies that may have manipulated the energy and gas markets both before the Federal Energy Regulatory Commission (FERC) and in various state and federal court venues. Last year, the Legislature was concerned with duplication of efforts in the state's representation on energy issues before FERC. As a result, the agencies were required to provide reports to the Legislature on how these agencies planned to coordinate their representation before FERC. The reports were recently submitted to the Legislature and the LAO believes that some informal coordination exists, but the LAO recommends that the Legislature direct the agencies involved to enter a memorandum of understanding to better formalize the coordination of agencies. For example, the PUC has been appropriated \$14.8 million in the current year to litigate one of the same cases that DOJ is requesting funds for. To the extent that other agencies are responsible for the workload, it would reduce the DOJ workload associated with this request.

Lastly, DOJ has indicated that approximately \$5 million has been recovered from the litigation of these cases and that they expect to recover more of these costs through settlements. The recovery of these costs is intended to reimburse DOJ for attorney expenses related to the cases. The LAO indicates that DOJ was unable to provide information that demonstrated how these recovered monies relate to their current request for funding. The LAO believes that DOJ funds recovered from the successful prosecution of these cases could offset a portion of the current funding request.

Finance Letter. The Administration has proposed a Finance Letter to increase the amount requested by \$4.9 million on a two-year limited term basis due to workload that has materialized since January. The Finance Letter also proposes the following budget bill language which would direct the Attorney General to petition the courts for recovery of costs and to deposit them in the general Fund to repay Energy Task Force costs.

0820-001-0001 Provision X. Upon settlement of cases in the above item by the Attorney General's Energy Task Force, the Attorney General shall secure an agreement or petition the courts for recovery of costs. Any recovery of costs shall be deposited in the General Fund to repay Energy Task Force costs appropriated in this item.

Action.

Oversight of Electricity Contract Settlement Funds

Background. The state has been actively renegotiating the long-term electricity contracts that the Department of Water Resources (DWR) entered into over the past two years to serve the customers of the state's three largest investor owned utilities. The majority of these contracts were signed at relatively high prices during the "energy crisis" in 2001. The Attorney General, the Governor's office, the Electricity Oversight Board (EOB), and the California Public Utilities Commission (CPUC) have all been involved at some level in renegotiating these contracts. Approximately 22 long-term contracts had been renegotiated resulting in an estimated \$5.2 billion in savings over the life of the contracts. The majority of these savings are a result of shortening the term of the contracts and lowering contract prices for future

electricity deliveries. In addition, the state has also received some cash and assets (six electricity generation turbines) as part of the settlements.

In February, the Attorney General announced a \$15.5 million settlement with El Paso Electric Company (EPE) that resolves allegations EPE colluded with Enron during California's energy crisis to manipulate the wholesale market and artificially inflate prices. The \$15.5 million payment was directed to the state's Electric Power Fund, which is used to pay off bonds sold by the state to finance the Department of Water Resources' wholesale energy purchases.

Last November, the state announced a \$417 million settlement of enforcement actions against Williams Energy Marketing & Trading that, among other things, requires Williams to furnish \$90 million worth of generating assets to the communities of San Francisco and San Diego. Under the settlement, Williams also will pay \$147 million in cash through 2010. Of that total, roughly \$90 million will fund alternative energy and energy efficiency retrofitting of schools and other public buildings in California. Similar alternative energy provisions were included in settlements reached earlier this year with Constellation and Calpine.

Under current law, the Attorney General has the authority to direct the expenditure of settlement funds that are provided to the state, unless the Legislature provides other direction in statute. Since statute does not currently direct settlements resulting from the renegotiation of electricity contracts, the cash and assets resulting from the settlements are being deposited in the Attorney General's Litigation Fund, which is the default account if no other account is specified statutorily.

LAO Recommendation. In order for the Legislature to evaluate the proposed and future uses for settlement funds to the state resulting from renegotiated electricity contracts, the LAO recommends that the Legislature's hold hearings on the issue of the proper disbursement of these funds. However, in the interim, the LAO recommends the enactment of legislation to establish a fund for the deposit of any cash settlements to the state and make the funds available upon appropriation by the Legislature.

Staff Recommendation. The subcommittee may wish to consider the following options:

- 1.) Take no action on this issue and continue to let settlement funds be deposited into the Attorney General's Litigation Fund.
- 2.) Adopt supplemental reporting language directing the energy agencies and the Department of Justice to report on the statutes and procedures under which these settlements are entered into, how decisions are made over how settlement funds are spent, and priorities for expenditure of these funds.
- 3.) Adopt the LAO recommendation, and direct staff, the LAO, the Attorney General, and the energy agencies to develop trailer bill language to redirect electricity settlement funds to a fund to appropriated by the Legislature.

Action